

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**JOINT EMERGENCY MOTION FOR
ENTRY OF AN AGREED ORDER AUTHORIZING DEBTOR TO OBTAIN
POSTPETITION FINANCING AND GRANTING RELATED RELIEF**

TO THE HON. CRAIG A. GARGOTTA,
U.S. BANKRUPTCY JUDGE:

Speed Industrial Gas, LLC (the “Debtor”) and Ernest W. (“Cotton”) Speed, the Debtor’s officer and principal and a party in interest (the “Lender” and, together with the Debtor, the “Parties”) hereby file this *Joint Emergency Motion for Entry of an Agreed Order Authorizing Debtor to Obtain Postpetition Financing and Granting Related Relief* (the “Motion”). Through this Motion, the Parties request the Court enter the Agreed Order substantially in the form attached hereto under Sections 105(a), 345, 363, 364, and 503 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) authorizing the Debtor: to (i) obtain post-petition unsecured financing, in an amount of up to \$750,000.00, pursuant to Section 364 of the Bankruptcy Code; and (ii) granting related relief. In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the

Order of Reference to Bankruptcy Judges, General Order 13-01 (W.D. Tex. Oct. 4, 2013) (Biery, C.J.).

2. The legal predicates for the requested relief herein are Sections 105(a), 345, 363, 364, and 503 of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004.

EMERGENCY CONSIDERATION

3. Pursuant to Bankruptcy Rule 6003, Debtor requests emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. Failure to receive the requested relief during the first 21 days of the Chapter 11 Case (as defined below) would severely disrupt the Debtor’s operations at this critical juncture. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard. The Debtor respectfully requests that the Court approve the relief requested in this Motion on an emergency basis.

BACKGROUND

4. On October 22, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, (the “Bankruptcy Code”), which initiated the above captioned and styled bankruptcy case (the “Chapter 11 Case”). The Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been appointed in the Chapter 11 Case.

5. The Debtor is an industrial, welding, and bulk gas company with facilities located in San Antonio and Pleasanton, Texas. The Debtor offers a variety of products and services including in house bulk gas installation and AWS Certified Weld Inspector Services.

6. The Debtor's current cash balance and cash flow are insufficient to cover the Debtor's immediate operating expenses, which will be incurred in the regular course of business including the payment of the Debtor's critical vendors (the "Critical Vendors") and employees (the "Employees").

7. Accordingly, the Debtor needs immediate access to financing to fund necessary operations, maintain and pay Critical Vendors and Employees, and preserve value for all stakeholders.

8. To meet these financing needs, the Lender seeks to give the Debtor an unsecured postpetition cash loan of up to \$750,000.00 (the "Loan") allowable as an administrative expense claim under Section 503(b)(1) of the Bankruptcy Code.

RELIEF REQUESTED

9. The Debtor respectfully requests entry of an Agreed order under Section 364(b) of the Bankruptcy Code and Bankruptcy Rules 4001(d) and 9014:

- a. Authorizing the Debtor to obtain up to \$750,000.00 in post-petition financing pursuant to the terms set forth below in the *Agreed Order Authorizing the Debtor to Obtain Unsecured Debt Allowable under Section 503(b)(1) as an Administrative Expense* (the "Agreed Order"), attached hereto as Exhibit A;
- b. Granting to the Lender an administrative expense priority for the kind specified in Section 503(b)(1) of the Bankruptcy Code;
- c. Authorizing the Debtor to disburse the Loan proceeds consistent with the Debtor's proposed Budget, attached hereto as Exhibit B; and
- d. Waiving any applicable stay and providing for the immediate effectiveness of the Agreed Order; and

10. As set forth in the Budget, the Debtor has and continues to incur necessary expenses for which the Debtor does not have sufficient funds, including rent, general business expenses, and salaries for the Debtor's key employees/contractors, which are critical to maintaining the Debtor's

value. In addition, the Debtors have contemporaneously filed several motions to pay certain prepetition claims that will be funded through the Loan proceeds. For example, the Debtor has filed a Motions to Pay Employees and Critical Vendors, which are critical to the Debtor's reorganization efforts. The Employees have continued to remain dedicated to the Debtor leading up to the filing of this Chapter 11 Case, but the Debtor and the estate cannot expect these individuals to continue their employment and dedication without payment. Similarly the Critical Vendors have been willing to provide goods and services to the Debtor on credit leading up to and throughout the initial stages of the Chapter 11 Case. However, without the Loan, the Debtor will not have sufficient cash to pay the Critical Vendors whose goods and services are needed if the Debtor's reorganization is to be successful. Accordingly, the Loan is critical to fund necessary estate expenses that are essential to the Debtor's successful reorganization.

SUMMARY OF RELIEF REQUESTED

11. The Loan will be provided in accordance with the terms and conditions set forth in the Agreed Order.

12. In compliance with Bankruptcy Rules 4001(c) and (d), the Debtor makes the following concise statement about the relief requested herein:

- a. **Borrowers:** Debtor Speed Industrial Gas, LLC.
- b. **Lender:** Ernest W. "Cotton" Speed, or his assigns.
- c. **Loan:** An unsecured cash loan to the Debtor in a principal amount of up to \$750,000.00.
- d. **Purpose:** The Loan proceeds would be available to the Debtor for general corporate purposes, including the payment of the Employees, the Critical Vendors, professional fees and expenses, and the costs of administering the Debtor's Chapter 11 Case, in accordance with, and subject to, the amounts set forth on the Budget.
- e. **Interest Rate:** The Loan will bear 0% interest.

f. **No Security:** The Loan will be unsecured, and allowable as an administrative expense claim under Section 503(b)(1) of the Bankruptcy Code.

BASIS FOR RELIEF

13. As set forth above, the Debtor's ability to maintain the Project and preserve the Debtors' assets for an eventual reorganization or sale requires post-petition financing.

14. Section 364(b) of the Bankruptcy Code provides “[t]he court, after notice and a hearing, may authorize the trustee [or debtor in possession] to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this Section, allowable under Section 503(b)(1) of this title as an administrative expense.” 11 U.S.C. § 364(b).

15. As set forth herein, the Debtor submits that the proposed financing satisfies the requirements of the Bankruptcy Code. Post-petition financing under the terms set forth in the Agreed Order is consistent with the Debtor's reasonable business judgment. Courts grant considerable deference to a debtor-in-possession's business judgment, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender.”).

16. It is extremely unlikely that financing on better terms is available. The Lender is prepared to make a substantial investment in the Debtor at significant financial risk to himself, in an effort to ensure the success of the Debtor's reorganization. Furthermore, under the circumstances of this Chapter 11 Case, the Debtor believes that the terms of the proposed Loan are reasonable, fair, and in the best interest of the Debtor and the Debtor's estate.

17. As set forth above, the Debtor does not have funds to satisfy ongoing and past-due expenses, including the expenses owed to the Critical Vendors and Employees, without the Loan. Access to immediate financing is necessary to maintain and continue to advance the Debtor's

business to a viable state. Accordingly, the Debtor has an immediate need to obtain financing to preserve and maximize the value of the Debtor's estate.

18. Furthermore, the Loan terms are fair and reasonable. The Debtor could not obtain financing on better terms in the open market. Specifically, the Debtor would not be able to obtain unsecured financing at 0% interest. In exchange, the Lender, the principal of the company, gives the Debtor's business the best chance at viability.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

19. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

20. Nothing contained in this Motion is or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Section 365 of the Bankruptcy Code; or (e) otherwise affect the Debtor's rights under Section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Motion.

NOTICE

21. Notice of this Motion shall be given to: (a) the U.S. Trustee; (b) the Debtor's creditors; (c) Debtor's prepetition lender; (d) the United States Attorney's Office for the Western District of Texas; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service; and (g) any party required to be served under Bankruptcy Local Rule 9013(d). Due to the nature of the relief requested herein, the Debtor submits that no other or further notice need be provided.

CONCLUSION

FOR THE REASONS STATED HEREIN, the Debtor respectfully requests that the Court approve the attach *Agreed Order Authorizing Debtor to Obtain Postpetition Financing and Granting Related Relief*, and for such other and further relief as may be just and proper.

Dated: October 24, 2021

Respectfully submitted,

By: /s/ Lloyd A. Lim
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*Proposed Counsel for Debtor,
Speed Industrial Gas, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the October 24, 2021, a copy of the foregoing instrument was served on the parties entitled to receive notices through the Court's electronic notification system as permitted by the Local Rules of the U.S. Bankruptcy Court for the Western District of Texas. I further certify that the foregoing was also served by U.S. first class mail, postage pre-paid on each person on the attached matrix on October 25, 2021.

/s/ Rachel T. Kubanda _____

Rachel T. Kubanda

List of Creditors

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203 E Rhapsody Dr
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ADT SECURITY SERVICES
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Pittsburgh, PA 15250

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San Antonio, TX 78219

ALAMO CITY TRAILER
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BLACKLINE
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BLANK, LLC
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Baton Rouge, LA 70806

Advanced Specialty Gas
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Reno, NV 89512

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FUELMAN
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Charlotte, NC 28272

ENTERPRISE PRODUCTS
1100 Louisiana, 10th Floor
Houston, TX 77002

GAS AND SUPPLY
109 Nell Deane
Shertz, TX 78154

EVOLUTION POWER TOOLS
8363 Research Dr
Davenport, LA 52806

GRAINGER
4924 NW Loop 410
San Antonio, TX 78229

FREUD AMERICA
BA Diablo Tools
39817 Treasury Cntr
Chicago, IL 60694

IMPERIAL STEEL
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FLEETCOR
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Covington, LA 70434

IPS EQUIPMENT
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Byron, MI 48418

FLEXOVIT
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Baton Rouge, LA 70884

MARIO'S WELDING
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KAPLAN INDUSTRIES INC
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LENCO
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KINECT COMMUNICATIONS
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OFFICE DEPOT
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ORS NASCO
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KLDISCOVERY ONTRACK, LLC
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PENNCOMP OUTSOURCED IT
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KNIGHT OFFICE SOLUTIONS
12961 Park Central
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PLASMA SYSTEMS
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MURPHY BROS PAINT CO
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1322 Industrial Park Dr
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REVCO INDUSTRIES
dba Black Stallion Ind
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Santa Fe Springs, CA 90670

STEELMAX TOOLS
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Centennial, CO 80112

RISE BROADBAND
PO Box 844580
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TECHNIWELD USA
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RUSH TRUCK LEASING
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TOYOTA LIFT OF SOUTH TX
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Dallas, TX 75373

SANREX CORP
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Washington, NY 11050

TORCH & GAUGE INC
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Grand Prairie, TX 75050

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TOYOTA COMMERCIAL
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WASHINGTON ALLOY CO
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TX CHILD SUPPORT SDU
PO Box 659791
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WASTE CONNECTIONS
dba Vaquero Waste & Recycle
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TEXPO ENERGY
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